

July 29, 2016

***Via CMRRR and Email***

Steve Thompson  
Branch Chief  
Air Enforcement Branch  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
adams.janet@epa.gov

Re: Freedom of Information Act ("FOIA") Request EPA-R6-2016-005053

Dear Mr. Thompson:

Air Liquide has carefully reviewed each of the documents identified in your letter dated June 6, 2016 and provides this response regarding the confidential business information ("CBI") included in those documents as requested.

Upon further review, Air Liquide has determined that documents 1-2 and 7-8 may be released pursuant to a FOIA request. Documents 3-6, however, are highly confidential CBI that if disclosed would pose serious competitive harm to Air Liquide. The following chart specifies which information may be released and which information should not be released by the EPA pursuant to a FOIA information request based on 552 U.S.C. § 552(b)(4):

No.	Dates	Title	Bates Numbers	Confidentiality
1	Not dated	40424 Air Liquide Facility Fire Summary of Community Real-Time Air Monitoring	Request 14 AL EPA 000376-380	Can be released.
2	Circa 2/9/2013	CD_ch01_1302090600_130209078_00	Request 20 d AL EPA 001030	Can be released.
3	Circa 2/9/2013	CD_ch02_1302090600_130209078_00	Request 20 d AL EPA 001031	Permanently confidential.
4	Circa 2/9/2013	CD_ch03_1302090600_130209078_00	Request 20 d AL EPA 001032	Permanently confidential.

5	Circa 2/9/2013	CD_ch03_1302090600_130209 078_01	Request 20 d AL EPA 001033	Permanently confidential.
6	Circa 2/9/2013	CD_ch04_1302090600_130209 078_00	Request 20 d AL EPA 001034	Permanently confidential.
7	Circa 2/9/2013	CD_log_1302090600_1302090 78_00	Request 20 d AL EPA 001035	Can be released.
8	Circa 2/9/2013	backup.info.txt	Request 20 d AL EPA 001036	Can be released.

Below Air Liquide provides responses to your specific questions with respect to the four documents listed above for which confidentiality should be maintained:

- 1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.**

Air Liquide requests that documents 3-6 be treated as permanently confidential. There is no event that will eliminate the need for confidentiality of these documents because these four documents—videos of internal operations at Air Liquide’s La Porte plant—include highly confidential information about the equipment design, plant configuration, and business processes used by Air Liquide to manufacture pure and specialty gases. *See* Ex. A, Dec. of Dr. Stephen Miller at ¶¶ 5-6.

- 2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?**

These four videos include highly confidential information about the equipment design, plant configuration, and operating practices used by Air Liquide to manufacture pure and specialty gases. *Id.* at ¶ 6. These videos include confidential information about: (a) the design and layout of proprietary filling, blending and analysis systems, including components and dimensions; (b) the configuration of process rooms used for gas filling, blending and analysis, including the number / capacity of fill systems and the production flow path; (c) the specific arrangement of four proprietary distribution panels used for gas blending, and the design / orientation of operator work stations for those panels; and (d) the identity (manufacturer) of equipment and instrumentation used by Air Liquide to certify products, as well as the number of such units (proprietary capacity and throughput data) and Air Liquide’s specific configuration of this equipment. *Id.* at ¶ 6.

This confidential information continues to be used by Air Liquide globally, and the designs, processes and configurations are expected to be used on an ongoing basis. *Id.* at ¶ 6. Moreover, even if Air Liquide were to change processes or configurations, disclosure of this information could still cause competitive harm to Air Liquide. *Id.* at 6. Each of the four confidential videos (AL EPA 001031-1034) shows proprietary equipment designs, plant / process room configurations and business processes used by Air Liquide in manufacturing pure and specialty gas products. *Id.* at ¶ 7. The confidential videos also reveal the quantity and configuration of production equipment in the Air Liquide-designed process rooms, from which information about plant throughput, capacity and even cost structure can be inferred. *Id.* at ¶ 7. Allowing any aspect of these videos to be released to the public would allow competitors, who otherwise would not be privy to this information, either to copy these configurations / processes or use this information to negatively contrast Air Liquide's designs and processes to their own designs in an effort to sway customers away from Air Liquide. *Id.* at ¶ 7.

**3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?**

The videos themselves have been held in strict confidence with very narrow distribution made on a need-to-know basis only and are not publicly available in any way. *Id.* at ¶ 7. These videos were produced in response to pre-suit discovery requests that were served pursuant to the Texas Rules of Civil Procedure, but the parties agreed to maintain their confidentiality. Ex. B, Nondisclosure and Confidentiality Agreement Between Air Liquide USA LLC and Michael Smith (April 4, 2013); Ex. C, Nondisclosure and Confidentiality Agreement Between Air Liquide USA LLC and Ortiz Family (March 30, 2013). These videos also were designated as confidential when they were produced to the Occupational Safety & Health Administration ("OSHA") as part of an investigation conducted in relation to the same incident that gave rise to EPA's investigation. Ex. D, Letter from T. Mensing to M. Hager (Aug. 21, 2013). Moreover, access to the rooms shown in the videos, as well as other operating areas of the plant, are restricted to authorized Air Liquide personnel only. Ex. A at ¶ 9. Access is granted with management pre-approval only, and Air Liquide written policy strictly forbids the use of photographic or video equipment while in the plant. *Id.* at ¶ 9.

**4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.**

The four confidential videos themselves have been held in strict confidence with very narrow distribution made on a need-to-know basis only and are not publicly available in

any way. Ex. A at ¶ 8. Portions of the videos do show some publicly available information, such as some commercially-available cylinders and equipment that are used by Air Liquide, but the use of these items in the context of the room configurations shown in these four videos is proprietary and confidential. *Id.* at ¶ 8. No part of any of these four confidential videos could be shown without revealing this highly confidential information that would threaten Air Liquide with competitive harm. *Id.* at ¶ 8.

- 5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?**

See Response to Questions 3 and 4.

- 6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.**

These four confidential videos (AL EPA 001031-1034) were designated as confidential when produced to both OSHA and EPA and have been treated as confidential but neither agency has made a determination as to the confidentiality of this information.

- 7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?**

Each of the four confidential videos (AL EPA 001031-1034) shows proprietary equipment designs, plant / process room configurations and business processes used by ALASG in manufacturing pure and specialty gas products. *Id.* at ¶ 7. The confidential videos also reveal the quantity and configuration of production equipment in the Air Liquide-designed process rooms, from which information about plant throughput, capacity and even cost structure can be inferred. *Id.* at ¶ 7. Allowing any aspect of these videos to be released to the public would allow competitors, who otherwise would not be privy to this information, either to copy these configurations / processes or use this information to negatively contrast Air Liquide's designs and processes to their own designs in an effort to sway customers away from Air Liquide. *Id.* at ¶ 7.

Below is a more detailed discussion of the specific confidential information contained in these four confidential videos:

- a. AL EPA 001031.** This confidential video shows the palletized cylinder filling room, which contains two MixAL systems. *Id.* at ¶ 10.a. MixAL systems (upright panels shown on the right side of the room) are an Air

Liquide proprietary design for automated simultaneous filling of multiple pure gas and industrial mixture cylinders. Palletized cylinders (shown on the left side of the room) are wheeled into a bay (“ramp”), are then connected to the MixAL system and filled. *Id.* at ¶ 10.a. The video clearly shows the palletized cylinders, fill ramps and MixAL panels, all of which is proprietary Air Liquide technology. *Id.* at ¶ 10.a. Releasing this video would reveal proprietary Air Liquide’s confidential MixAL ramp design. *Id.* at ¶ 10.a. Commercially available systems exist that perform a similar function, but the specific MixAL arrangement was designed, constructed and automated by Air Liquide for its own use and is a company core technology used throughout the world. *Id.* at ¶ 10.a. The confidential video also shows Air Liquide’s particular method for bundling cylinders in packs with pack-filling manifolds that are designed by Air Liquide. *Id.* at ¶ 10.a. In addition to revealing all aspects of the MixAL room, this video would give a competitor significant insight into Air Liquide’s confidential palletized filling technology. *Id.* at ¶ 10.a.

- b. **AL EPA 001032 and AL EPA 001033.** Both of these confidential videos show the process room for gravimetric blending, one of ALASG’s primary methods for manufacturing high accuracy specialty gas mixtures by weight. *Id.* at ¶ 10.b. This process requires that ALASG employees perform intricate calculations of the weight of each gas that must be added to achieve the concentration(s) requested on the customer’s order. Then, the employee must precisely weigh each of the gases into the cylinder using carefully defined and documented procedures. *Id.* at ¶ 10.b. The design of the blending panels and the arrangement of the room are not only highly proprietary, but also critical to safety and success of the business. *Id.* at ¶ 10.b. These videos show four different confidential panels designed by Air Liquide and by Scott Specialty Gases (a predecessor of Air Liquide); the valving, controls and layout of these panels are particularly sensitive and highly guarded. *Id.* at ¶ 10.b. Releasing these videos would reveal highly confidential information about the processes by which mixture cylinders are produced by ALASG. In addition, these videos show (on left side of the room where cylinders are shown going on and off rollers) highly sensitive details regarding the cylinder homogenization process. *Id.* at ¶ 10.b. While cylinder rollers are commercially available, release of this video would make public the company’s proprietary recipes for specialty blends, including the length of time cylinders spend on the rollers, the speed at which the cylinders are rolled, the type of cylinders into which Air Liquide blends its mixes, as well as the identity of the commercial equipment used by ALASG. *Id.* at ¶ 10.b. Moreover, the exact configuration / organization of the room, and the particular materials and instruments kept in it, are proprietary. *Id.* at ¶

10.b. For example, the video shows specific piping and supports for both bulk and cylinder gases that are brought into the room from raw material storage; these videos would reveal Air Liquide's proprietary method for raw material storage and management. *Id.* at ¶ 10.b. Finally, these confidential videos show Air Liquide employees actually performing specialty gas blending operations, which could be exploited by Air Liquide competitors who could seize on information about the order and methods used by Air Liquide employees to blend specialty gases.

- c. **AL EPA 001034.** This confidential video shows the analytical laboratory, where cylinders are analyzed and certificates of analysis are produced. *Id.* at ¶ 10.c. Freshly blended cylinders, or containing raw materials for qualification, are analyzed in this room using a wide variety of instruments. *Id.* at ¶ 10.c. This confidential video reveals the specific instruments (instrument manufacturer and configuration) that are used by ALASG, as well as the proprietary layout of the room. *Id.* at ¶ 10.c. While virtually all analytical instruments are commercially available, their exact configuration, how they are used, what they are used for, the order in which they are used, as well as the number of instruments, is highly confidential. *Id.* at ¶ 10.c. Competitors would be able to gain knowledge about Air Liquide operations (products made, capacity, throughput and cost) and could use this information to disadvantage Air Liquide. *Id.* at ¶ 10.c. As is the case with the confidential videos showing the gravimetric blending room, the fact that Air Liquide keeps certain items in the analytical lab or the location in the room where they are kept could be used against Air Liquide by competitors, either to copy Air Liquide processes or to negatively portray Air Liquide's practices. *Id.* at ¶ 10.c.

8. **Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.**

In reliance on the EPA's agreement to treat with confidentiality those documents designated as confidential, Air Liquide submitted the four confidential videos voluntarily in response to a request by the EPA under Section 114 of the Clean Air Act. Ex. E, Letter from T. Mensing to C. Flores (Oct. 18, 2013). Again, as discussed above, this information is not the kind that would customarily be released to the public, but instead would be treated with strict confidentiality as discussed in response to Questions 2-5 above.

**9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.**

If the EPA were to disclose these four confidential videos to the public, similar information likely would be more difficult for the EPA to obtain in the future. Here, Air Liquide did not object to EPA's requests for the production of these four confidential videos in reliance on the EPA's agreement to treat the videos as confidential. Should the EPA now make these confidential videos public, Air Liquide and other entities will be more likely to object to and resist such requests rather than voluntarily provide such information in an effort to avoid disclosure of their competitively sensitive confidential information.

**10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text, that you claim to be (a) trade secret(s).**

See Response to Question 7.

**11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).**

Air Liquide is only requesting that the EPA maintain as confidential that specific information that if released could present competitive harm to Air Liquide. Upon further review of the eight documents subject to a FOIA request, Air Liquide has determined that four may be released to the public but that four are highly confidential.

Best regards,



Jamie A. Aycock

JAA:tek

**DECLARATION OF DR. STEPHEN MILLER**

1. My name is Dr. Stephen B. Miller. My date of birth is February 16, 1947 and my address is 527 Caddy Drive in Doylestown PA 18901.
2. I am of sound mind, capable of making this declaration, and personally acquainted with the facts herein stated. I declare under penalty of perjury that the facts stated in this declaration are true and correct and based on my personal knowledge.
3. I am the Chief Technical Officer for Air Liquide America Specialty Gases (hereafter referred to as ALASG). I am familiar with the specialty gas blending operations and processes for ALASG and its related entities. In particular, I am familiar with the specialty gas blending operations that were conducted at ALASG's La Porte, Texas cylinder filling facility.
4. I have reviewed the following documents, including videos, that I understand were produced and originally designated as confidential to the EPA:

No.	Dates	Title	Bates Numbers
1	Not dated	40424 Air Liquide Facility Fire Summary of Community Real-Time Air Monitoring	Request 14 AL EPA 000376-380
2	Circa 2/9/2013	CD_ch01_1302090600_130209078_00	Request 20 d AL EPA 001030
3	Circa 2/9/2013	CD_ch02_1302090600_130209078_00	Request 20 d AL EPA 001031
4	Circa 2/9/2013	CD_ch03_1302090600_130209078_00	Request 20 d AL EPA 001032
5	Circa 2/9/2013	CD_ch03_1302090600_130209078_01	Request 20 d AL EPA 001033
6	Circa 2/9/2013	CD_ch04_1302090600_130209078_00	Request 20 d AL EPA 001034
7	Circa 2/9/2013	CD_log_1302090600_130209078_00	Request 20 d AL EPA 001035
8	Circa 2/9/2013	backup.info.txt	Request 20 d AL EPA 001036

5. Document Nos. 3-6 (AL EPA 001031-001034) contain highly proprietary, confidential Air Liquide information about its internal operations, including equipment design, plant configuration and business processes used at ALASG's La Porte plant and elsewhere. I am not aware of any point in time or event that would change the confidential nature of this information.
6. These four videos include highly confidential information about the equipment, processes and operating practices used by ALASG to manufacture pure and specialty gases. Specifically, these videos include confidential information about:
  - a. the design and layout of proprietary filling, blending and analysis systems, including components and dimensions.
  - b. the configuration of process rooms used for gas filling, blending and analysis, including the number / capacity of fill systems and the production flow path.





- c. the specific arrangement of four proprietary distribution panels used for gas blending, and the design / orientation of operator work stations for those panels.
- d. The identity (manufacturer) of equipment and instrumentation used by Air Liquide to certify products, as well as the number of such units (proprietary capacity and throughput data) and ALASG's specific configuration of this equipment.


This confidential information continues to be used by Air Liquide globally, and the designs, processes and configurations are expected to be used on an ongoing basis. I further assert that, even if Air Liquide were to change processes or configurations, disclosure of this information could still cause competitive harm Air Liquide.

- 7. Each of the four confidential videos (AL EPA 001031-1034) shows proprietary equipment designs, plant / process room configurations and business processes used by ALASG in manufacturing pure and specialty gas products. The confidential videos also reveal the quantity and configuration of production equipment in the Air Liquide-designed process rooms, from which information about plant throughput, capacity and even cost structure can be inferred. Allowing any aspect of these videos to be released to the public would allow competitors, who otherwise would not be privy to this information, either to copy these configurations / processes or use this information to negatively contrast Air Liquide's designs and processes to their own designs in an effort to sway customers away from Air Liquide.
- 8. The four confidential videos themselves have been held in strict confidence with very narrow distribution made on a need-to-know basis only and are not publicly available in any way. Portions of the videos do show some publicly available information, such as some commercially-available cylinders and equipment that are used by Air Liquide, but the use of these items in the context of the room configurations shown in these four videos is proprietary and confidential. No part of any of these four confidential videos could be shown without revealing this highly confidential information that would threaten Air Liquide with competitive harm.
- 9. Access to the rooms shown in the videos, as well as other operating areas of the plant, are restricted to authorized Air Liquide personnel only. Access is granted with management pre-approval only, and Air Liquide written policy strictly forbids the use of photographic or video equipment while in the plant.
- 10. Below is a more detailed discussion of the specific confidential information contained in these four confidential videos:
  - a. **AL EPA 001031.** This confidential video shows the palletized cylinder filling room, which contains two MixAL systems. MixAL systems (upright panels shown on the right side of the room) are an Air Liquide proprietary design for automated simultaneous filling of multiple pure gas and industrial mixture cylinders. Palletized cylinders (shown on the left side of the room) are wheeled into a bay ("ramp"), are then connected to the MixAL system and filled. The video clearly shows the palletized cylinders, fill ramps and MixAL panels, all of which is proprietary Air Liquide technology. Releasing this video would reveal proprietary Air Liquide's confidential MixAL ramp design. Commercially available systems exist that perform a similar function, but the specific MixAL arrangement was designed, constructed and automated by Air Liquide for its own use and is a company core technology used throughout the world. The confidential video also shows Air Liquide's particular method for bundling cylinders in packs with pack-filling manifolds that are designed by Air Liquide. In addition to revealing all aspects

of the MixAL room, this video would give a competitor significant insight into Air Liquide's confidential palletized filling technology.

- b. **AL EPA 001032 and AL EPA 001033.** Both of these confidential videos show the process room for gravimetric blending, one of ALASG's primary methods for manufacturing high accuracy specialty gas mixtures by weight. This process requires that ALASG employees perform intricate calculations of the weight of each gas that must be added to achieve the concentration(s) requested on the customer's order. Then, the employee must precisely weigh each of the gases into the cylinder using carefully defined and documented procedures. The design of the blending panels and the arrangement of the room are not only highly proprietary, but also critical to safety and success of the business. These videos show four different confidential panels designed by Air Liquide and by Scott Specialty Gases (a predecessor of Air Liquide); the valving, controls and layout of these panels are particularly sensitive and highly guarded. Releasing these videos would reveal highly confidential information about the processes by which mixture cylinders are produced by ALASG. In addition, these videos show (on left side of the room where cylinders are shown going on and off rollers) highly sensitive details regarding the cylinder homogenization process. While cylinder rollers are commercially available, release of this video would make public the company's proprietary recipes for specialty blends, including the length of time cylinders spend on the rollers, the speed at which the cylinders are rolled, the type of cylinders into which Air Liquide blends its mixes, as well as the identity of the commercial equipment used by ALASG. Moreover, the exact configuration / organization of the room, and the particular materials and instruments kept in it, are proprietary. For example, the video shows specific piping and supports for both bulk and cylinder gases that are brought into the room from raw material storage; these videos would reveal Air Liquide's proprietary method for raw material storage and management. Finally, these confidential videos show Air Liquide employees actually performing specialty gas blending operations, which could be exploited by Air Liquide competitors who could seize on information about the order and methods used by Air Liquide employees to blend specialty gases.
- c. **AL EPA 001034.** This confidential video shows the analytical laboratory, where cylinders are analyzed and certificates of analysis are produced. Freshly blended cylinders, or containing raw materials for qualification, are analyzed in this room using a wide variety of instruments. This confidential video reveals the specific instruments (instrument manufacturer and configuration) that are used by ALASG, as well as the proprietary layout of the room. While virtually all analytical instruments are commercially available, their exact configuration, how they are used, what they are used for, the order in which they are used, as well as the number of instruments, is highly confidential. Competitors would be able to gain knowledge about Air Liquide operations (products made, capacity, throughput and cost) and could use this information to disadvantage Air Liquide. As is the case with the confidential videos showing the gravimetric blending room, the fact that Air Liquide keeps certain items in the analytical lab or the location in the room where they are kept could be used against Air Liquide by competitors, either to copy Air Liquide processes or to negatively portray Air Liquide's practices.

Executed in Doylestown, Pennsylvania, on the 29th day of July 2016.

 7/29/16  
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Dr. Stephen B Miller, CTO, ALASG

## NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT (the "Agreement") is made and entered into this 4<sup>th</sup> day of April 2013 by and between Air Liquide USA LLC ("Air Liquide") and Michael Smith. Air Liquide and Michael Smith possess certain confidential or sensitive information that may be disclosed in connection with the investigation of the explosion that occurred at Air Liquide's Specialty Gas Facility on the morning of February 9, 2013 (the "Incident"), or any litigation arising therefrom ("the Subsequent Litigation"). This Agreement shall govern the production and use of documents exchanged as part of the Parties' investigation and the Subsequent Litigation.

1. Designation of Material as Confidential. Air Liquide and Michael Smith may designate any document produced to the other as "Confidential" (hereinafter referred to as "Confidential Material") when counsel believes that such Confidential Material constitutes or reveals confidential information. The producing Party may designate Confidential Material by marking any originals or copies of the documents or other tangible items with the legend "Confidential."
2. Use of Confidential Material. A non-producing Party shall not, except with the consent of the producing Party or by court order, use Confidential Material for any purpose, including, without limitation, any business or commercial purpose, other than for the purpose of preparing for and conducting the investigation of the Incident and the Subsequent Litigation.
3. Disclosure of Confidential Material. Except with the consent of the producing Party or upon court order, Confidential Material shall not be disclosed directly or indirectly by the person receiving such materials to persons other than the following:
  - (A) The Court, persons employed by the Court, and stenographers transcribing the testimony or argument at a hearing in any Subsequent Litigation, or any appeal therefrom;
  - (B) Counsel for the Parties, whether or not counsel of record, as well as associates, legal assistants, paralegals, secretarial, and clerical employees, and outside services (including, without limitation, copy services, litigation consulting services, document management services, and graphics services) who are assisting counsel in the investigation of the Incident or the Subsequent Litigation;
  - (C) Experts and consultants retained, employed, or consulted by outside counsel of record in connection with the investigation of the Incident or

**EXHIBIT**

**B**

in the prosecution, and/or defense of the Subsequent Litigation, who execute the Undertaking described below;

- (D) Any Party to this Agreement, including any employee or former employee of a Party;
- (E) Witnesses in Subsequent Litigation who execute the Undertaking described below; and
- (F) Court reporters and videographers at depositions.

Any person identified in Sections 3(C), 3(D), 3(E), and 3(F) above who reviews a producing Party's Confidential Material shall, prior to being given access to the information, be informed of and given a copy of the provisions of this Agreement, and, as to those persons identified in Sections 3(C), 3(E), and 3(F) above, shall execute a sworn copy of the Undertaking, which shall be dated when signed, in the form annexed hereto as Exhibit A, indicating that he/she has read this Agreement and will abide by its terms.

Such sworn statements will not be disclosed to any other Party but shall be maintained by lead counsel for each Party until 90 days after the entry of a final, non-appealable judgment or dismissal. Such sworn statements may only be discovered for good cause shown as to a probable violation of the terms of this Agreement.

4. Designation of Testimony by Producing Party or Witness. The Party producing a witness to give deposition and other oral testimony or a non-party witness shall have fourteen (14) days from the date of receipt of a copy of the deposition or other transcript in which to designate all or portions of the testimony as Confidential Material. All deposition exhibits that are designated as Confidential Material shall remain so and shall be subject to all the terms of this Agreement without the necessity of a Party re-designating that exhibit as Confidential Material. From the time the testimony is given through that fourteen-day period, all information disclosed in the testimony shall be deemed Confidential Material subject to the terms of this Agreement.

The responsible Party shall make a good faith effort that any confidentiality designations be stated orally on the record or as soon as possible after transcription by giving written notice identifying the information to be so designated by page and line number(s) to counsel of record and the witness within the fourteen-day time period described above. If any deposition is displayed or read to the jury at trial, all deposition statements and all markings indicating that the deposition had previously been designated by the Party as Confidential Material shall be removed prior to offering the

deposition testimony into evidence or displaying same to the jury, and no mention shall be made of the previous designation of confidentiality.

Any deposition reporter and videographer who records testimony in this Action at a deposition shall be required to comply with paragraph 3 above.

All deposition testimony and exhibits designated "Confidential" shall be bound in a separate transcript, and clearly marked "Confidential." If any deposition is recorded via videotape, counsel accepts responsibility for insuring that Confidential Material is not disclosed to any person not entitled under this Agreement to receive it.

5. Use of Confidential Material at Trial. If any document or other material is used as an exhibit at trial or otherwise displayed to the jury, all markings indicating that the document or material had previously been designated by the Party as Confidential Material shall be removed prior to offering the document or material into evidence or displaying same to the jury, and no mention shall be made of the previous designation of confidentiality.
6. Court Filings. In the event that counsel for any Party to this Agreement determines to file with, or submit to, the Court any Confidential Information or papers containing or referencing such information, the Parties and their counsel shall give written notice to the other Party's counsel at least five (5) business days, excluding legal holidays, before such filing or submission so as to give the other Party's counsel time to seek a temporary or permanent sealing order, if desired, from the Court, unless the circumstances do not permit such notice.
7. Return of Discovery Material. All provisions of this Agreement restricting the use of information obtained during the investigation of the Incident and Subsequent Litigation shall continue to be binding after the conclusion of the investigation and any Subsequent Litigation, including all appeals, until order of the Court, unless the Parties agree otherwise in writing. Any and all originals and copies of documents or other information produced in this litigation designated as "Confidential" shall, at the request and cost of the producing Party, be returned to the Party within sixty (60) days after a final, non-appealable judgment herein or settlement of this Action or destroyed in that time frame, except that counsel of record for each Party may maintain in its files copies of pleadings and other papers filed with the Court, each written discovery request and responses thereto, and each deposition together with exhibits marked at the deposition. Within the same time frame, and upon written request by the producing Party, any analyses, memoranda, or notes (excluding indices that do not summarize the substance of "Confidential" materials) which were internally generated based upon

Confidential Materials shall be destroyed. The foregoing sentence does not apply to attorney work product. In the event that documents are returned or destroyed at the request of the producing Party, the other Party or its counsel of record shall certify in writing that all such documents as required by this paragraph have been returned or destroyed, as the case may be.

8. Objections to Confidentiality Designation. Any Party may object to the designation of particular information as "Confidential" by giving written notice to the Party making the designation. Such notice shall identify with specificity the Confidential Material to which the objection is directed and the basis of the objection. If any Party disputes the designation of the Confidential Material and such dispute cannot be resolved within five (5) business days of receipt of such notice, it shall be the obligation of the Party opposing the designation to file an appropriate motion requesting *in camera* review and a ruling by the Court regarding the "Confidential" designation. The Party supporting or opposing the designation shall then have ten (10) business days in which to file papers in support of, or in opposition to, the "Confidential" designation. The disputed Confidential Material shall be treated as originally designated pending a ruling from the Court. In any proceedings challenging a designation pursuant to this paragraph, the Party making the designation shall have the burden of proof that the challenged Confidential Material is entitled to the protection of the original designation.
9. No Waiver. Neither the taking of any action not in accordance with the provisions of this Agreement nor the failure to object thereto shall be construed as a waiver of any right to object to the furnishing of information and, except as expressly provided, shall not relieve any Party or witness of the obligation to produce information properly sought in the course of this investigation and the Subsequent Litigation. Nothing herein shall be construed to affect in any way the admissibility of any document, testimony, or other evidence at trial. Nothing contained in this Agreement or any declaration of confidentiality or restriction hereunder shall be used or characterized by any Party as an "admission" by a Party opponent.
10. Agreement Applicable to Non-Parties. Any non-party from whom documents or information is sought shall be entitled to designate materials and testimony produced as "Confidential" pursuant to the terms of this Agreement, and the Parties may designate materials and testimony produced by non-parties as "Confidential" pursuant to the terms of this Agreement.
11. Stipulation Effective On Signing. After the execution of this Agreement by the Parties' respective counsel, but before any approval by the Court, this Agreement shall become effective among such parties who have executed this agreement immediately upon execution.

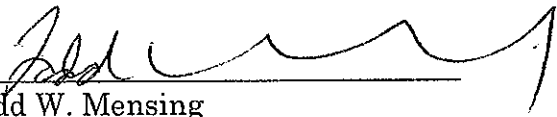
12. If a Party inadvertently fails to designate a document as "Confidential," that Party may do so at any time. A Party's inadvertent failure to designate a document as "Confidential" does not waive or otherwise affect a Party's right to use these designations.
13. This Agreement may be modified or amended only by written agreement of duly authorized representatives of the Parties or, upon a showing of good cause, by order of the Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as set forth below.

*[This space intentionally left blank. Signatures are on following page.]*

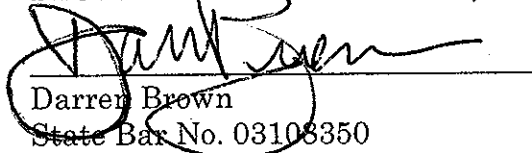
**AGREED:**

**AHMAD, ZAVITSANOS, ANAIPAKOS,  
ALAVI, & MENSING, P.C.**



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**ATTORNEYS FOR AIR LIQUIDE**

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dbrown@pulf.com

**ATTORNEY FOR MICHAEL SMITH**



EXHIBIT A

UNDERTAKING ON CONFIDENTIAL MATERIALS

The undersigned has read the attached Agreement, understands its contents, and hereby undertakes to make no disclosures of Confidential Material to any person who is not permitted to have access to Confidential Material under the Agreement as applicable. In addition, the undersigned agrees not to use Confidential Material for any purpose whatsoever other than in connection with this investigation or any Subsequent Litigation. The undersigned understands that a violation of this Undertaking could be punishable and hereby submits to the jurisdiction of the Court for purposes of enforcement of the Agreement and this Undertaking.

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print or type)

Signature: \_\_\_\_\_

## NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT (the "Agreement") is made and entered into this 20 day of March 2013 by and between Air Liquide USA LLC ("Air Liquide") and Julie Ortiz, Individually, and as representative for the Estate of Javier Rene Ortiz, III, deceased, and as next friend of Daniella Ortiz, Gabriel Ortiz and Antonio Ortiz, minors, and Javier Ortiz, Jr., and Maria Esther Ortiz (the "Ortiz Family")(collectively, the "Parties"). Air Liquide and the Ortiz Family possess certain confidential or sensitive information that may be disclosed in connection with the investigation of the explosion that occurred at Air Liquide's Specialty Gas Facility on the morning of February 9, 2013 (the "Incident"), or any litigation arising therefrom ("the Subsequent Litigation"). This Agreement shall govern the production and use of documents exchanged as part of the Parties' investigation and the Subsequent Litigation.

1. Designation of Material as Confidential. Air Liquide and the Ortiz Family may designate any document produced to the other as "Confidential" (hereinafter referred to as "Confidential Material") when counsel believes that such Confidential Material constitutes or reveals confidential information. The producing Party may designate Confidential Material by marking any originals or copies of the documents or other tangible items with the legend "Confidential."
2. Use of Confidential Material. A non-producing Party shall not, except with the consent of the producing Party or by court order, use Confidential Material for any purpose, including, without limitation, any business or commercial purpose, other than for the purpose of preparing for and conducting the investigation of the Incident and the Subsequent Litigation.
3. Disclosure of Confidential Material. Except with the consent of the producing Party or upon court order, Confidential Material shall not be disclosed directly or indirectly by the person receiving such materials to persons other than the following:
  - (A) The Court, persons employed by the Court, and stenographers transcribing the testimony or argument at a hearing in any Subsequent Litigation, or any appeal therefrom;
  - (B) Counsel for the Parties, whether or not counsel of record, as well as associates, legal assistants, paralegals, secretarial, and clerical employees, and outside services (including, without limitation, copy services, litigation consulting services, document management services, and graphics services) who are assisting counsel in the investigation of the Incident or the Subsequent Litigation;

**EXHIBIT**

**C**

- (C) Experts and consultants retained, employed, or consulted by outside counsel of record in connection with the investigation of the Incident or in the prosecution, and/or defense of the Subsequent Litigation, who execute the Undertaking described below;
- (D) Any Party to this Agreement, including any employee or former employee of a Party;
- (E) Witnesses in Subsequent Litigation who execute the Undertaking described below; and
- (F) Court reporters and videographers at depositions.

Any person identified in Sections 3(C), 3(D), 3(E), and 3(F) above who reviews a producing Party's Confidential Material shall, prior to being given access to the information, be informed of and given a copy of the provisions of this Agreement, and, as to those persons identified in Sections 3(C), 3(E), and 3(F) above, shall execute a sworn copy of the Undertaking, which shall be dated when signed, in the form annexed hereto as Exhibit A, indicating that he/she has read this Agreement and will abide by its terms.

Such sworn statements will not be disclosed to any other Party but shall be maintained by lead counsel for each Party until 90 days after the entry of a final, non-appealable judgment or dismissal. Such sworn statements may only be discovered for good cause shown as to a probable violation of the terms of this Agreement.

4. Designation of Testimony by Producing Party or Witness. The Party producing a witness to give deposition and other oral testimony or a non-party witness shall have fourteen (14) days from the date of receipt of a copy of the deposition or other transcript in which to designate all or portions of the testimony as Confidential Material. All deposition exhibits that are designated as Confidential Material shall remain so and shall be subject to all the terms of this Agreement without the necessity of a Party re-designating that exhibit as Confidential Material. From the time the testimony is given through that fourteen-day period, all information disclosed in the testimony shall be deemed Confidential Material subject to the terms of this Agreement.

The responsible Party shall make a good faith effort that any confidentiality designations be stated orally on the record or as soon as possible after transcription by giving written notice identifying the information to be so designated by page and line number(s) to counsel of record and the witness within the fourteen-day time period described above. If any deposition is

displayed or read to the jury at trial, all deposition statements and all markings indicating that the deposition had previously been designated by the Party as Confidential Material shall be removed prior to offering the deposition testimony into evidence or displaying same to the jury, and no mention shall be made of the previous designation of confidentiality.

Any deposition reporter and videographer who records testimony in this Action at a deposition shall be required to comply with paragraph 3 above.

All deposition testimony and exhibits designated "Confidential" shall be bound in a separate transcript, and clearly marked "Confidential." If any deposition is recorded via videotape, counsel accepts responsibility for insuring that Confidential Material is not disclosed to any person not entitled under this Agreement to receive it.

5. Use of Confidential Material at Trial. If any document or other material is used as an exhibit at trial or otherwise displayed to the jury, all markings indicating that the document or material had previously been designated by the Party as Confidential Material shall be removed prior to offering the document or material into evidence or displaying same to the jury, and no mention shall be made of the previous designation of confidentiality.
6. Court Filings. In the event that counsel for any Party to this Agreement determines to file with, or submit to, the Court any Confidential Information or papers containing or referencing such information, the Parties and their counsel shall give written notice to the other Party's counsel at least five (5) business days, excluding legal holidays, before such filing or submission so as to give the other Party's counsel time to seek a temporary or permanent sealing order, if desired, from the Court, unless the circumstances do not permit such notice.
7. Return of Discovery Material. All provisions of this Agreement restricting the use of information obtained during the investigation of the Incident and Subsequent Litigation shall continue to be binding after the conclusion of the investigation and any Subsequent Litigation, including all appeals, until order of the Court, unless the Parties agree otherwise in writing. Any and all originals and copies of documents or other information produced in this litigation designated as "Confidential" shall, at the request and cost of the producing Party, be returned to the Party within sixty (60) days after a final, non-appealable judgment herein or settlement of this Action or destroyed in that time frame, except that counsel of record for each Party may maintain in its files copies of pleadings and other papers filed with the Court, each written discovery request and responses thereto, and each deposition together with exhibits marked at the deposition. Within the same time

frame, and upon written request by the producing Party, any analyses, memoranda, or notes (excluding indices that do not summarize the substance of "Confidential" materials) which were internally generated based upon Confidential Materials shall be destroyed. The foregoing sentence does not apply to attorney work product. In the event that documents are returned or destroyed at the request of the producing Party, the other Party or its counsel of record shall certify in writing that all such documents as required by this paragraph have been returned or destroyed, as the case may be.

8. Objections to Confidentiality Designation. Any Party may object to the designation of particular information as "Confidential" by giving written notice to the Party making the designation. Such notice shall identify with specificity the Confidential Material to which the objection is directed and the basis of the objection. If any Party disputes the designation of the Confidential Material and such dispute cannot be resolved within five (5) business days of receipt of such notice, it shall be the obligation of the Party opposing the designation to file an appropriate motion requesting *in camera* review and a ruling by the Court regarding the "Confidential" designation. The Party supporting or opposing the designation shall then have ten (10) business days in which to file papers in support of, or in opposition to, the "Confidential" designation. The disputed Confidential Material shall be treated as originally designated pending a ruling from the Court. In any proceedings challenging a designation pursuant to this paragraph, the Party making the designation shall have the burden of proof that the challenged Confidential Material is entitled to the protection of the original designation.
9. No Waiver. Neither the taking of any action not in accordance with the provisions of this Agreement nor the failure to object thereto shall be construed as a waiver of any right to object to the furnishing of information and, except as expressly provided, shall not relieve any Party or witness of the obligation to produce information properly sought in the course of this investigation and the Subsequent Litigation. Nothing herein shall be construed to affect in any way the admissibility of any document, testimony, or other evidence at trial. Nothing contained in this Agreement or any declaration of confidentiality or restriction hereunder shall be used or characterized by any Party as an "admission" by a Party opponent.
10. Agreement Applicable to Non-Parties. Any non-party from whom documents or information is sought shall be entitled to designate materials and testimony produced as "Confidential" pursuant to the terms of this Agreement, and the Parties may designate materials and testimony produced by non-parties as "Confidential" pursuant to the terms of this Agreement.

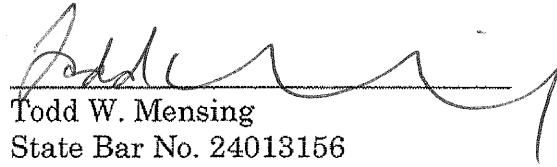
11. Stipulation Effective On Signing. After the execution of this Agreement by the Parties' respective counsel, but before any approval by the Court, this Agreement shall become effective among such parties who have executed this agreement immediately upon execution.
12. If a Party inadvertently fails to designate a document as "Confidential," that Party may do so at any time. A Party's inadvertent failure to designate a document as "Confidential" does not waive or otherwise affect a Party's right to use these designations.
13. This Agreement may be modified or amended only by written agreement of duly authorized representatives of the Parties or, upon a showing of good cause, by order of the Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as set forth below.

*[This space intentionally left blank. Signatures are on following page.]*

**AGREED:**

**AHMAD, ZAVITSANOS, ANAIPAKOS,  
ALAVI, & MENSING, P.C.**



Todd W. Mensing

State Bar No. 24013156

Megan Bibb

State Bar No. 24073924

1221 McKinney Street, Suite 3460

Houston, Texas 77010

Telephone: (713) 655-1101

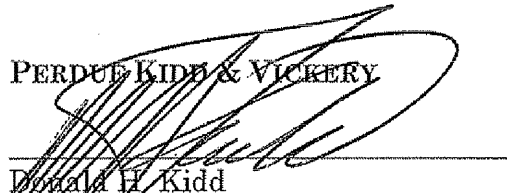
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tmensing@azalaw.com

mbibb@azalaw.com

**ATTORNEYS FOR AIR LIQUIDE**

**PERDUE KIDD & VICKERY**



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dkidd@justiceseekers.com

rfass@justiceseekers.com

**ATTORNEYS FOR THE ORTIZ FAMILY**

EXHIBIT A

UNDERTAKING ON CONFIDENTIAL MATERIALS

The undersigned has read the attached Agreement, understands its contents, and hereby undertakes to make no disclosures of Confidential Material to any person who is not permitted to have access to Confidential Material under the Agreement as applicable. In addition, the undersigned agrees not to use Confidential Material for any purpose whatsoever other than in connection with this investigation or any Subsequent Litigation. The undersigned understands that a violation of this Undertaking could be punishable and hereby submits to the jurisdiction of the Court for purposes of enforcement of the Agreement and this Undertaking.

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print or type)

Signature: \_\_\_\_\_



August 21, 2013

**By Electronic Mail and CM-RRR**

Mhekeba Hager  
Occupational Safety & Health Administration  
17625 El Camino Real, Suite 400  
Houston, TX 77058

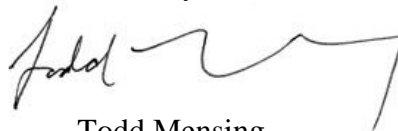
Re: Designation of Documents Produced to OSHA as Air Liquide's  
Confidential Business Information

Dear Mr. Hager,

As you are aware, Air Liquide has produced over 20,000 pages of documents during the course of OSHA's six-month investigation into the February 9, 2013 explosion at Air Liquide's Specialty Gas Facility in La Porte, Texas (the "Incident"). These documents contain Air Liquide's confidential and proprietary business information that, if made public, could cause significant harm to Air Liquide's business. To protect Air Liquide's confidential processes, Air Liquide would like to designate documents numbered Air Liquide 000001-021301 as well as the video numbered AL 019799 as "Confidential Business Information," and asks that OSHA exempt these materials from any public records requests made pursuant to the Freedom of Information Act, or any other similar laws.

If you have any questions, or if you would like to discuss these issues further, please feel free to contact me at (713) 600-4904.

Cordially,



Todd Mensing

TWM/mlb

CC: Althea Powell Logans

4846-2832-8469, v. 2



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Mhekeba Hager  Occupational Safety &amp; Health Administration  17625 El Camino Real, Suite 400  Houston, TX 77058</p>		<p>B. Received by (Printed Name)  Rebecca Little</p>	<p>C. Date of Delivery  8-22-13</p>
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number  (Transfer from service label)</p>		<p>7012 1010 0002 5872 9980</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1F

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Althea Powell Logans  Occupational Safety &amp; Health Administration  17625 El Camino Real, Suite 400  Houston, TX 77058</p>		<p>B. Received by (Printed Name)  Rebecca Little</p>	<p>C. Date of Delivery  8-22-13</p>
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number  (Transfer from service label)</p>		<p>7012 1010 0002 5872 9942</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

October 18, 2013

*VIA FEDERAL EXPRESS*

Carlos Flores (6EN-AT)  
US EPA – Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

Re: Clean Air Act Section 114 Information Request  
February 9, 2013 Incident at Air Liquide La Porte Facility

Dear Mr. Flores:

The following is Air Liquide's response to the Clean Air Section 114 Information Request ("CAAIR") from the United States Environmental Protection Agency ("EPA") directed to Air Liquide regarding the explosion that occurred at Air Liquide's Specialty Gas Facility (the "Facility") in La Porte, Texas on February 9, 2013 (the "Incident").

Subject to both the general and specific objections noted below, and without waiving any rights, defenses and/or privileges that may be available to Air Liquide at law and/or equity, Air Liquide submits the following responses. Air Liquide reserves its rights to continue its review and to supplement its responses as additional information becomes available.

### **GENERAL OBJECTIONS**

Air Liquide asserts the following general objections, which it incorporates into all of its responses to the CAAIR:

1. Air Liquide reserves all rights, defenses, privileges and protections that it may have in regard to the information sought by EPA, including the attorney-client privilege, the attorney work product doctrine, all privileges and protections related to materials generated in anticipation of litigation, the confidential business information ("CBI") and trade secret protections, and any other privilege or protection available to it under law.
2. Air Liquide objects to any requirement to produce information already in the possession of a government agency including, but not limited to, USEPA, Region 6, or that is already in the public domain.

**EXHIBIT**  
**E**

3. Air Liquide objects to this CAAIR to the extent that it is repetitive of the Request for Information served on Air Liquide in February 2013. Air Liquide already answered many of these questions in its response to correspondence dated March 28, 2013 (the "March 28th Response"), and attached hereto as Exhibit A. Additionally, Air Liquide reasserts the objections made in its March 28, 2013 Response.

### **AIR LIQUIDE'S RESPONSES**

Pursuant to your CAAIR dated August 19, 2013, the following are Air Liquide's responses in connection with the above-captioned incident. To respond to the CAAIR, Air Liquide consulted with individuals in its Health, Safety, Environment, and Security Department. Air Liquide also consulted with its employees who were working at the Facility at the time of the Incident. Any responsive information gathered as a result of these conversations is incorporated into Air Liquide's responses to the CAAIR.

1. Who owns and/or operates the location where the event occurred (hereinafter the facility")?

**ANSWER:** Air Liquide America Specialty Gases, LLC ("ALASG") owns the facility. See documents Bates labeled Request 1 AL EPA 000001-000007.

2. Briefly describe the facility (e.g. Discuss what activities take place on-site and what substances are produced, processed, handled or stored on-site). Further, describe all equipment, structures, buildings and process units found at the facility where the event took place.

**ANSWER:** Air Liquide objects to this Request because it is vague, overly broad, and overly burdensome. Specifically, Air Liquide cannot reasonably be expected to describe all "equipment, structures, buildings, and process units." The same objection applies to the request to discuss substances that are "produced, processed, handled, or stored on-site." It would be overly burdensome for Air Liquide to describe or discuss such "substances," because there are thousands of them. Additionally, Air Liquide objects to the terms "process unit" and "substances" as vague, because these are not defined terms.

Subject to and without waiving the foregoing objections, Air Liquide responds that the facility where the event occurred is engaged in the business of pressurizing pure gases and specialty blends for sale to ALASG's customers. Air Liquide also attaches to this response building drawings for the plant (Request 2 AL EPA 000090-000165 Confidential), process and instrument diagrams ("P&IDs") (Request 2 AL EPA 000024-000089 Confidential; Request 2 AL EPA 000275-000345 Confidential), available equipment lists (Request 2 AL EPA 000203-000274

Confidential; Request 2 AL EPA 000346 Confidential), monitor specifications (Request 2 AL EPA 000008-000023), and an inventory of cylinders from the gravimetrics room (Request 2 AL EPA 000166-000202 Confidential). Air Liquide will supplement this Response if further information becomes available.

3. Provide a detailed description and timeline of the event. Include the best known start time and duration of the incident and the timeline for any emergency response.

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates by reference its answer to Request 5 in the March 28th Response. (*See* Ex. A at 3.)

4. Have there been any investigations or audits of the event? Are investigations or audits pending? Who performed the investigations or audits? Provide a copy of the reports, audits, or any other analysis describing the causes and consequences of the event, including all final or draft reports and all final or draft audit results.

**ANSWER:** Air Liquide objects to this request to the extent that it seeks privileged information. Air Liquide further objects to this request to the extent that it seeks public information that is mutually available to EPA.

Subject to and without waiving these objections, Air Liquide's investigation of the Incident is ongoing. Additionally, OSHA and the Harris County Fire Marshal ("HCFMO") have completed their investigations of the event. HCFMO's report is publicly available, and **OSHA did not issue any citations or a report.** Air Liquide attaches to this Request a copy of HCFMO's report (Request 4 AL EPA 000347-000375).

5. What measures have been taken to address the findings, conclusions, or recommendations of the investigations or audits?

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates its answer to Request 2 in the March 28th Response. (*See* Ex. A at 3.)

6. Are there any findings, conclusions, or recommendations that have not been addressed fully, and if so, what measures remain to be taken, and what is the expected timeline for implementing those measures?

**ANSWER:** *See supra* response to Request 5.

7. What process units were involved in the event? Provide a brief process description for the processes involved in the event. Please also provide a process flow diagram.

**ANSWER:** Air Liquide objects to this Request because the term “process unit” is vague and undefined. Without more information, Air Liquide cannot respond to this Request. The Request is also vague to the extent it asks for a process flow diagram, because it fails to identify a process.

Subject to and without waiving the foregoing objections, Air Liquide has not identified any process flow diagrams for the facility. Air Liquide will supplement this Response if further information becomes available.

8. What specific substances were released during the event, including the estimated or known amounts of each substance? Indicate all air contaminants that were released during the event, even those materials with release amounts below the reportable quantity.

**ANSWER:** Air Liquide objects to this Request because it is vague. Specifically, the terms “substance” and “air contaminants” are undefined.

Subject to and without waiving this objection, Air Liquide is unaware of any harmful substances being released in excess of legal limits as shown by the data submitted in response to Request 14, *infra*.

9. What is the initial best known cause or root cause of the event? Were there any additional contributing factors that you are aware of?

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates its answer to Request 4 in the March 28th Response. (See Ex. A at 3.)

10. Was there any property or equipment damage, both on-site and off-site, that resulted from the event? If yes, explain.

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates its answer to Request 6 in the March 28th Response. (See Ex. A at 3.)

11. Were there any injuries attributed to the event? If yes, explain.

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates its answer to Request 7 in the March 28th Response. (See Ex. A at 4.)



12. Did you, or anyone else, issue any evacuation or shelter in place orders as a result of the event for your facility or surrounding community?

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates its answer to Request 9 in the March 28th Response. (See Ex. A at 5.)

13. What emergency response measures were taken, by you or anyone else, to stop and/or to minimize hazards from the event?

**ANSWER:** Because this request is repetitive of a prior request, Air Liquide incorporates its answer to Request 8 in the March 28th Response. (See Ex. A at 4.)

14. Did the facility perform any air monitoring during or after the event, including any routine monitoring? If so, then please provide a summary of the results.

**ANSWER:** Air Liquide objects to this request to the extent it seeks information that is privileged. Air Liquide further objects to the request because it is overbroad and vague. As worded, it asks for all monitoring performed since February 9, 2013. The term "air monitoring" is vague, because it does not specify the type of data sought.

Subject to and without waiving these objections, Air Liquide attaches hereto a summary of the community air monitoring performed after the explosion, which is Bates labeled Request 14 AL EPA 000376-000380. Community readings were performed on February 9th and 10th, as well as on February 25th after a methyl methacrylate cylinder appeared to be leaking on site. **These readings yielded zero detections.**

15. Identify and provide copies of any industry standards, internal standards, standard operating procedures, or manufacturer's recommendations related to the incident including equipment, process units, and or personnel activities involved in the incident.

**ANSWER:** Air Liquide objects to this request because it is vague, overbroad, and unduly burdensome. Air Liquide further objects to the extent that the documents requested are mutually available to EPA, *e.g.*, "industry standards."

Subject to and without waiving the foregoing objections, Air Liquide has attached procedures on gravimetric blending, which are Bates labeled Request 15 AL EPA 000381-000526 Confidential.

16. Has the Texas Commission on Environmental Quality (TCEQ) conducted an inspection or requested information regarding the event? If so, please provide the name and contact information for each agency person who conducted an inspection or requested information?

**ANSWER:** TCEQ personnel were on site the date of the incident, but TCEQ did not conduct an investigation or request information regarding the event. Air Liquide does not have the name or contact information for the TCEQ agent(s) who performed the air monitoring.

17. Please provide any documents associated with the identification of hazards at your facility.

**ANSWER:** Air Liquide objects to this request because it is vague, overbroad, and unduly burdensome. Specifically, documents "associated" with the identification of "hazards" encompasses hundreds, if not thousands of documents, which would be not relevant. For example, Air Liquide has documents related to the hazards of operating fork lifts or step ladders. Without more specificity, Air Liquide is unable to respond to this Request.

18. Provide, as applicable, the TCEQ air registration, permit, facility, equipment, and regulated entity numbers associated with the site/process where the incident occurred.

**ANSWER:** See documents Bates labeled Request 18 AL EPA 000527-000544.

19. We determined that your facility has a Risk Management Plan (RMP). Did the event take place at a RMP-covered process?

**ANSWER:** Air Liquide objects to this Request because the term "Risk Management Plan" is vague and undefined. Without more information, Air Liquide cannot respond to this Request.

20. With respect to the event that occurred at the Facility on February 9, 2013;
- a. Please describe any property or equipment damage that resulted from the Incident.
  - b. Were the employees in the lab where the explosion took place working under normal business hours?
  - c. Were the employees who were working in the area where the explosion took place under any specific training program to perform such duties? Please submit copies of the training procedures.



- d. Is the area where the explosion occurred under video surveillance? If so, please submit a copy of the video(s) for the morning of February 9, 2013 from 7:00 am. through 9:00 am.

**ANSWER to (a):** *See supra* response to Request 10.

**ANSWER to (b):** Air Liquide objects to this Request because it is vague. Specifically, the term “lab” is undefined, and there are several areas in the facility that could be considered a “lab.” Additionally, the term “normal business hours” is vague. As EPA is aware, the event occurred on a Saturday morning at approximately 7:30 a.m. It is not abnormal for employees to occasionally work on Saturdays.

**ANSWER to (c):** Air Liquide objects to this Request because it is vague. Specifically, the term “area” is undefined. As worded, it is not clear what part of the facility the Request references. Air Liquide further objects to the terms “specific training program” and “such duties.” It is unclear whether the Request seeks information about training generally or something else.

Subject to and without waiving the foregoing objections, Air Liquide reiterates that it is still investigating the cause of the Incident. Air Liquide also attaches to these Responses the training records it has identified for Javier Ortiz and Michael Smith (Request 20(c) AL EPA 000545-001023 Confidential). Air Liquide will supplement this Response if further information becomes available.

**ANSWER to (d):** Air Liquide objects to this Request because it is vague. Specifically, the term “area” is undefined. As worded, it is not clear whether EPA seeks all video footage of the facility, or just footage of the room where the Incident occurred.

Subject to and without waiving the foregoing objections, Air Liquide has provided a copy of the video surveillance footage of the room where the Incident occurred (Request 20(d) AL EPA 001030-001036).<sup>1</sup> The video surveillance system that was in place at the time of the Incident does not time stamp the video, and, therefore, Air Liquide cannot verify that the footage provided starts at exactly 7:00 a.m. Moreover, the video surveillance system shut down shortly after the explosion, which occurred at approximately 7:30 a.m. As such, video footage from about 7:30 a.m. to 9:00 a.m. does not exist.

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<sup>1</sup> Please note that one of the files included with the videos is a “setup” file. This file has to be run and installed before the videos will play on Windows Media Player.

Carlos Flores  
October 18, 2013  
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Many of the documents produced by Air Liquide in response to the CAAIR contain confidential and proprietary business information. These documents are labeled "CONFIDENTIAL." In accordance with EPA's instructions, Air Liquide has created a chart describing the reason for the confidentiality designations, which is attached hereto as Exhibit B to this response.

If you have any questions or concerns regarding Air Liquide's responses to the CAAIR, please feel free to contact me.

Cordially,

A handwritten signature in black ink, appearing to read "Todd Mensing", with a stylized flourish at the end.

Todd Mensing

TWM:mlb  
Enclosure